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**MEMORANDUM OF UNDERSTANDING**  
(Valley Health Center)

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") dated as of September 7, 2004, is entered into by and among the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic ("Agency"), the City of Milpitas, a public body, corporate and politic ("City"), and the County of Santa Clara, a political subdivision of the State of California ("County"). Agency, City and County are hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

**RECITALS**

A. City is the owner of certain real property consisting of approximately 2.23 acres and known as Santa Clara County Assessors' Parcel Numbers 022-08-041 and 022-08-042 (the "Property"). City intends to convey the Property to Agency. With respect to each action described in this MOU, the term "City/Agency" shall mean the entity which is the owner of the Property at the time such action is undertaken.

B. The Parties have undertaken discussions relating to the sale and development of the southerly portion of the Property, consisting of approximately 1.16 acres and designated as Assessor's Parcel Number 022-08-042 (hereafter, the "Health Center Site"), and the Parties wish to set forth in this MOU their preliminary points of agreement without intending to be bound thereby.

C. The Parties anticipate that they may, upon completion of appropriate CEQA review ("CEQA Review"), enter into a Disposition and Development Agreement ("DDA") with regard to the matters described herein. Pending completion of CEQA Review, the Parties desire to set out terms upon which their respective staff personnel will negotiate, with neither Party being bound thereby, the possible terms of a DDA, which staff personnel then would recommend to their respective boards for approval.

D. Although their respective staff personnel may engage in negotiations regarding a possible DDA, California law requires CEQA Review prior to any formal action by either Party. Therefore, neither Party shall be bound by this MOU or by subsequent negotiations except (i) upon completion of CEQA Review for the project proposed to be developed on the Property (the "Project") and (ii) upon the approval of the governing board of each Party following public hearing(s) held in accordance with law.

**NOW THEREFORE**, the Parties hereby agree as follows:

1. Purpose of this MOU. This MOU is intended as an expression of a preliminary basis for negotiations between the Parties. The Parties expressly acknowledge and agree that: (i) this MOU is subject to the approval of the governing board of each of the Parties; (ii) the Parties intend to instruct their respective staff personnel to engage in negotiations on the terms of a DDA which will include the terms set forth in this MOU (as such terms may be modified or augmented pursuant to agreement of the Parties); and

(iii) staff negotiations will not bind either Party, and no DDA will be effective except upon the completion of CEQA Review and subsequent approval by the governing board of each Party.

2. No Obligation to Proceed. Nothing in this MOU creates a binding obligation, and no binding agreement will exist unless the Parties sign a final and definitive DDA. Each Party expressly acknowledges and agrees that this MOU creates no obligation on the part of any Party to execute a DDA or to proceed with the sale or development of the Health Center Site. Each Party shall participate in negotiations regarding the Health Center Site and development of the Health Center (as defined in Section 4.2.1) at such Party's sole cost and expense.

3. Preliminary Terms. All of the terms set forth in this MOU are preliminary in nature and subject to (i) completion of CEQA Review and approval by each Party's governing board; and (ii) memorialization in an executed DDA. The provisions of this Section are hereby incorporated into each and every Section of this MOU as though set forth in their entirety in each such Section.

4. Terms of Land Disposition.

4.1 Sale Price. Based upon an appraisal conducted by Hulberg & Associates, dated March 22, 2004, the sale price for conveyance of the Health Center Site from Agency/City to County shall be Forty Dollars (\$40) per square foot (the "Per Square Foot Price") for a total price not to exceed Two Million Twenty Thousand Dollars (\$2,020,000). The square footage of the Health Center Site shall be determined by a survey to be prepared at the City/Agency's cost when the final boundary lines of the Health Center Site are determined. The final square footage of the Health Center Site (less any portion located under public streets) shall be multiplied by the Per Square Foot Price to determine the purchase price not to exceed \$2,020,000.

4.2 Preliminary Site Plan. No later than October 31, 2004, the City/Agency shall, in consultation with the County, prepare a preliminary site plan ("Preliminary Site Plan") for development of the Property. The Preliminary Site Plan shall depict the locations of (i) the Valley Health Center to be constructed by County as more particularly described in Section 4.2.1 (the "Health Center"), and (ii) a housing development which shall be affordable to low-income senior households (the "Senior Housing Development"). The Preliminary Site Plan shall also depict all of the following for each facility to be developed on the Property: (a) minimum site boundaries, (b) ingress and egress points, (c) utility service points, (d) emergency vehicular access, and (e) location for refuse storage and collection. The Health Center Site shall be substantially in the parcel configuration that currently exists with minor lot-line adjustments to accommodate the Senior Housing Development.

4.2.1 Health Center. The County intends to develop the Health Center Site as a primary care medical facility of approximately 60,000 square feet, in a structure approximately 45 feet high with an additional 10 feet for screened, roof-mounted equipment on an approximate 20,000 square feet footprint. As of the date hereof, it is

anticipated that primary medical services ("**Primary Medical Services**") to be provided at the Health Center may include: internal medicine, obstetrics and gynecology, pediatrics, ophthalmology/optometry, podiatry, dentistry, immunization, and women's, infant's and children's (WIC) supplemental nutrition services. In addition, as of the date hereof it is anticipated that the Health Center will provide support services ("**Medical Support Services**") which may include a pharmacy, radiology services, a clinical laboratory, records and administration, and a community meeting room. The Parties agree that under no circumstances shall mental health, alcohol and drug rehabilitation services be offered as Primary Medical Services at the Health Center; provided however, such services may be offered on a limited basis as an ancillary adjunct to the Primary Medical Services.

4.3 Escrow Holder. The Parties have designated First American Title Guaranty Company, 1737 No. First Street, San Jose, CA, Linda Tugade, as escrow holder. The County will order a preliminary title report on the Health Center Site following adoption of this MOU by the City, the Agency and the County.

4.4 Minimum Site Acreage. The City and Agency understand that the County is interested in the Health Center site only if, in County's reasonable judgment, the Preliminary Site Plan designates a site of adequate size for development of the Health Center, and if parking is available as described in Section 5.

4.5 Allocation of Costs for Evaluation and Disposition of Health Center Site. The City/Agency shall undertake all of the following actions at the City's/Agency's cost and expense: (i) creation of a legal lot of record for the Health Center Site; and (ii) preparation of a topographical map and a legal description for the Health Center Site. The County shall pay 100% of the the cost of any policy of title insurance County elects to purchase with respect to the Health Center Site. City/Agency and the County shall each pay one-half of all Health Center Site escrow fees, recording fees and conveyance fees.

4.6 No Brokers. Each Party represents that it has retained no broker in connection with the disposition of the Health Center Site, and agrees to defend, indemnify and hold harmless the other Party from and against any and all claims, expenses, costs or liabilities arising from the act of the indemnifying Party in connection with any claim by any person or entity of a right to a real estate commission, brokerage fee, finder's fee, or similar compensation in connection with the disposition of the Health Center Site. Notwithstanding any contrary provision contained herein, the terms of this Section shall survive the close of escrow and the expiration or earlier termination of this MOU and the DDA.

4.7 Evaluation of Property Condition; AS-IS Sale.

4.7.1 Right of Entry. During the period (the "**Due Diligence Period**") ending on the earlier of the termination of this MOU or the execution of the DDA, provided that County indemnifies City and Agency pursuant to this Section, County and County's agents and employees shall have the right, upon reasonable notice to

City/Agency, to enter upon the Health Center Site for the purpose of inspecting and testing the condition of the Health Center Site, including without limitation, for the purpose of conducting geotechnical analyses and Phase II environmental assessments. County's inspection and testing of the Health Center Site shall be at County's sole cost and expense. County shall obtain City's/Agency's advance consent in writing to any proposed physical testing of the Health Center Site, which consent shall not be unreasonably conditioned, withheld or delayed. County shall repair, restore and return the Health Center Site to its original condition after such physical testing, at County's sole cost and expense. County shall schedule any such physical tests during normal business hours unless otherwise approved by City/Agency. County agrees to indemnify City and Agency and hold City and Agency harmless from and against all liability, loss, cost, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) resulting from County's or County's agents entry upon the Health Center Site, except to the extent that such liability, loss, cost, damage and expense arises as a result of the gross negligence or willful misconduct of City or Agency or the agents of either. County's indemnity and hold harmless obligation shall not extend to discovery of any condition that exists on the Health Center Site prior to County's entry. Prior to County's entry upon the Health Center Site, County shall provide City/Agency with a certificate of insurance meeting City's/Agency's current insurance requirements. County shall provide City/Agency with copies of all environmental, geotechnical and other investigative reports prepared for the Health Center Site.

4.7.2 AS-IS Purchase. Any DDA between the Parties shall provide that the County shall purchase the Health Center Site in its "AS IS" condition as such condition exists at the end of the Due Diligence Period.

5. Garage and Parking.

5.1 Construction of Garage. At City/Agency expense, the City/Agency shall construct a City-owned parking structure ("Garage") in which 275 parking stalls (the "Reserved Parking Spaces") shall be reserved for the exclusive use of Health Center employees, clients, visitors and invitees during Health Center business hours. The Garage shall be available for use no later than concurrently with the opening of the Health Center. At the closing for conveyance of the Health Center Site to County, the Parties will execute an instrument that (i) shall address the rights and obligations of the Parties with respect to the use and maintenance of the Garage, (ii) shall provide the County a perpetual right to use the Reserved Parking Spaces, and (iii) may specify the location of some portion of the Reserved Parking Spaces. The County may finance the construction costs for the Health Center and the County share of the Garage through the issuance of bonds. The nature of the County interest in the Garage for financing purposes may need to be adjusted and the City and Agency will cooperate with the County in structuring the Party's rights in the Garage to attempt to meet bond financing requirements. Nothing in this section shall be deemed to require the City and Agency to agree to any particular structure for the County rights in the Garage.

5.2 County Share of Construction Cost. As a contribution toward the cost of construction of the Garage, County shall pay to City/Agency the sum equal to Six Million

Eight Hundred Seventy Five Thousand Dollars (\$6,875,000) (the equivalent of \$25,000 per stall set aside for Health Center use); provided however, such sum shall be reduced if County's pro rata share of the actual direct costs to construct the Garage ("Construction Costs") is less than such sum. Construction Costs shall not include land costs or City or Agency general administrative overhead costs, but may include the City's and Agency's direct costs related to construction of the Garage for such services as City inspections, engineering and architectural services. Construction Costs shall not include the cost of any incremental cost relating to ancillary uses that City/Agency elects to include as part of the Garage.

5.3 County Share of Maintenance and Operations Cost. County shall contribute a pro rata share toward the cost of maintenance and operation of the Garage in an annual sum not to exceed \$68,750 (\$250 per stall), increasing by a reasonable annual adjustment factor to be agreed upon by City/Agency and County. The City/Agency shall pay the balance of maintenance and operation costs. County's pro rata share of Garage construction and operation and maintenance costs shall be calculated by dividing 275 by the total number of parking stalls in the Garage (i.e., if the Garage has 550 stalls, County's pro rata share shall be 50%).

5.4 Design of Garage. During the design phase for the Garage, the City and Agency shall consult with the County in order to ensure that the final design of the Garage, the location of the Reserved Parking Spaces and the cost for the Garage are acceptable to the County.

6. Development Fees; Processing and Entitlements; Off-Site Improvements; Prevailing Wages.

6.1 Utility Connection and Engineering Fees. County will pay the City's usual and customary utility connection charges for water, storm drain, and sanitary sewer and the City's standard engineering fees attributable to the development and construction of the Health Center. The Parties estimate that the total of the foregoing costs will be approximately \$288,100. City shall ensure that appropriately sized City-owned infrastructure is available to serve the Health Center Site at no additional cost to the County other than usual and customary connection charges.

6.2 Planning and Impact Fees. Although the County is not subject to City planning ordinances, review or limitations, in connection with development of the Health Center, the County has agreed to pay the following amounts, which are the City's usual and customary planning and impact fees applicable to a private medical office facility: (i) an estimated \$75,000 in Health Center traffic impact fees, and (ii) planning application and processing fees based upon time and materials not to exceed \$20,000.

6.3 Processing and Entitlements.

6.3.1 Environmental Review. The City/Agency has retained the services of a qualified environmental consultant, LSA Associates, which is preparing an

Environmental Impact Report ("EIR") for the Health Center, the Garage and related projects. City/Agency will bear the cost for preparation of the EIR. City/Agency shall provide County with copies of administrative drafts of all documents related to the environmental review process. County shall be entitled to rely upon the EIR for Health Center approval.

6.3.2 Building Permits and Inspections. County, at County's expense, shall secure all building permits and inspections required in connection with development of the Health Center using County staff from County agencies rather than City services. The County will not be submitting or processing any documentation through the City for the Health Center development.

6.4 Off-Site Improvements. The Agency shall pay the cost of off-site improvements related to the Health Center, including installation of sidewalks, street beautification, lighting, and landscaping.

6.5 Prevailing Wages. The Parties acknowledge that the County shall pay prevailing wages for the construction of the Health Center and that the City shall pay prevailing wages for the construction of the Garage.

7. Co-ordination of Construction. City/Agency shall manage development of the Garage Project utilities, and streetscape improvements, including pedestrian and safety improvements so that such improvements are in place concurrently with the opening of the Health Center. The County will manage the construction of the Health Center to minimize and prevent delays in the construction of neighboring City facilities including without limitation, the City library, the Garage and other parking facilities, streets, and the Senior Housing Development. The City will use its best efforts to mitigate any negative impact of any City construction that may continue in the vicinity of the Health Center after the occupancy of the Health Center. The City and the County will work in good faith to develop a master program schedule for the City projects and the Health Center which shall address the staging, storage, coordination, safety, worker parking, traffic, and other issues related to the concurrent construction of these projects.

8. Counterparts. This MOU may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one instrument.

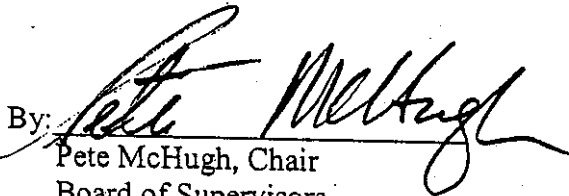
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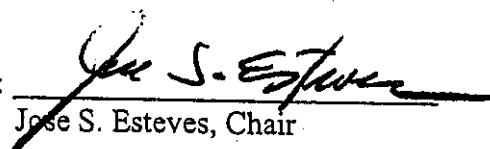
9. Captions. The captions used in this MOU are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.

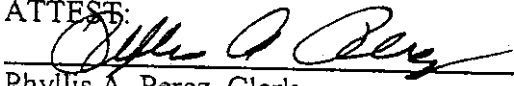
IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding effective as of the date first written above.

COUNTY OF SANTA CLARA

MILPITAS REDEVELOPMENT  
AGENCY

By:   
Pete McHugh, Chair  
Board of Supervisors

By:   
Jose S. Esteves, Chair

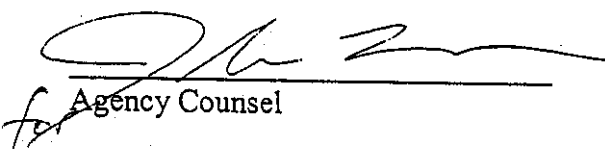
ATTEST:   
Phyllis A. Perez, Clerk  
Board of Supervisors

ATTEST:   
Gail Blalock, Clerk

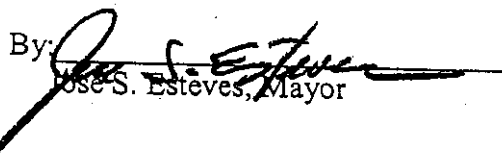
APPROVED AS TO FORM AND  
LEGALITY:

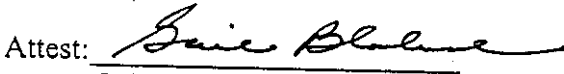
  
Deputy County Counsel

APPROVED AS TO FORM:

  
Agency Counsel

CITY OF MILPITAS

By:   
Jose S. Esteves, Mayor

Attest:   
Gail Blalock, City Clerk

Approved as to Form:

  
City Attorney

A.S.T.